

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 07-0467 BB

MICHAEL EUGENE ELDRED,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant's Motion for Modification or Reduction of Sentence (Doc. 134). On January 29, 2008, Defendant pleaded guilty to possessing with intent to distribute 50 grams and more of cocaine base (Doc. 89). On August 28, 2008, he was sentenced to 120 months' imprisonment (Doc. 116). At the time, Defendant's sentence reflected the mandatory minimum penalty for his offense of conviction. *See* 21 U.S.C. § 841(b)(1)(a)(iii) (2006). Defendant invokes 18 U.S.C. § 3582(c)(2) as the statutory basis for the relief he seeks. On consideration of Defendant's claims and arguments, the motion will be denied.

First, the Court imposed the statutory minimum sentence for Defendant's offense, and § 3582(c)(2) authorizes reductions only for retroactive Guideline amendments. Second, although Congress in 2010 lowered the minimum penalty for the amount of cocaine base that Defendant possessed, *see* Pub. L. No. 111-220, § 2(a)(1), 124 Stat. 2372 (2010), codified at 21 U.S.C. § 841(b)(1)(A)(iii), the amended statutory penalty was not made retroactively applicable. *See United States v. Phillips*, No. 96-CR-389-JLK, 2011 WL 1361417, at *1, *3 n.2 (D. Colo. Apr. 11, 2011) (noting "the . . . counterproductive results these ill-advised [mandatory minimum penalty] statutes produce"); *United States v. White*, No. 08-20120-CM, 2012 WL 1080591, at *1-*2 (D. Kan. Mar.

29, 2012); *see also United States v. Reevey*, 631 F.3d 110, 114-15 (3d Cir. 2010); *United States v. Wright*, 412 F. App'x 922, 923 (8th Cir. 2011); *Davis v. United States*, No. 09-CR-3396-L-2, 2012 WL 1107735, at *2 (S.D. Cal. Apr. 2, 2012). Because neither § 3582(c)(2) nor the 2010 amended statutory minimum penalty in § 841(b)(1)(A)(iii) allows reduction of Defendant's sentence, his motion will be denied.

IT IS THEREFORE ORDERED that Defendant's Motion for Modification or Reduction of Sentence (Doc. 134) is DENIED.



UNITED STATES DISTRICT JUDGE